

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned On Briefs May 7, 2009

IN THE MATTER OF: T.M., II

**Direct Appeal from the Juvenile Court for Lawrence County
No. J-15200M Patricia McGuire, Judge**

No. M2008-01471-COA-R3-JV - Filed June 11, 2009

The trial court determined Respondent Mother was relieved of her obligation to pay child support to the State for a child in the State's custody when the child had run away and his whereabouts were unknown. The State appeals. We reverse and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed and
Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which HOLLY M. KIRBY, J. and J. STEVEN STAFFORD, J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter, and Juan G. Villaseñor, Assistant Attorney General, for the Appellant, State of Tennessee O/B/O T.M., II.

OPINION

The facts relevant to our disposition of this Title IV-D child support case on appeal are undisputed. The Juvenile Court for Lawrence County placed T.M., II, ("T.M.") a minor child born February 1991, in the custody of the Tennessee Department of Children's Services ("the State") sometime prior to April 18, 2008. Respondent/Appellee Stephanie Machado (Ms. Machado) is T.M.'s mother. On April 18, 2008, the State filed a petition to set child support pursuant to Tennessee Code Annotated § 37-1-151. Ms. Machado acknowledged service and the matter was heard by the trial court on April 29, 2008. At the hearing, Ms. Machado testified that T.M. had run away for the third time and asserted that she should not be required to pay child support for a child who was not physically in the State's custody. The State asserted that Ms. Machado is legally obligated to pay child support under the statute, and that the State is liable for the care of the child, including medical expenses and transportation of the child back to the State's physical custody.

The trial court held that Ms. Machado was not obligated to pay child support while the child was on runaway status. The trial court ordered the Department of Children's Services to notify the

Child Support Office immediately upon T.M.'s return to its physical custody. The trial court entered final judgment on April 29, 2008, and the State filed a timely notice of appeal to this Court.

Issue Presented

The only issue presented for our review is whether the juvenile court erred when it refused to set child support for a child who is in State custody.

Standard of Review

The resolution of the issue presented on appeal requires us to construe Ms. Machado's obligation under Tennessee Code Annotated § 37-1-151. The construction of a statute is a question of law which we review *de novo* with no presumption of correctness attached to the determination of the trial court. *Hill v. City of Germantown*, 31 S.W.3d 234, 237 (Tenn. 2000).

Analysis

We begin our analysis by noting that the material facts of this case are not in dispute, and that Ms. Machado has not filed a brief in this Court. Further, the record contains no transcript. The State filed a statement of the evidence on May 28, 2008; Ms. Machado filed no objection. This case requires us to determine whether, under Tennessee Code Annotated 37-1-151, a parent is obligated to pay child support for a child in State custody where that child is on runaway status.

It is well-settled that the court's primary purpose when construing a statute is to ascertain and give effect to the intention and purpose of the legislature. *E.g., McLane Co. v. State of Tennessee*, 115 S.W.3d 925, 928 (Tenn. Ct. App. 2002) (citations omitted). The meaning and intent of a statutory section is to be ascertained in light of the general nature and purpose of the statute as a whole, and not from the special or singular words in a sentence or section. *Id.* Insofar as possible, the legislature's intent is to be ascertained from the natural and ordinary meaning of the language employed by the legislature, without a forced or subtle interpretation that would limit or extend the statute's application or purpose. *Id.* The court should seek to avoid a construction that would result in a conflict between statutes. *Id.* Accordingly, insofar as possible, statutes should be construed so as to provide a harmonious operation of the laws. *Id.* When the language of a statute is unambiguous, the legislature's intent must be derived from the plain and ordinary meaning of the words contained in the statute. *State v. Wilson*, 132 S.W.3d 340, 341 (Tenn. 2004). If the statutory language is ambiguous, then the legislative intent must be ascertained from the entire statutory scheme. *Id.*

Tennessee Code Annotated § 37-1-151(2005) states:

Parents' liability for support. -- (a) In any case in which the court shall find a child dependent and neglected, unruly or delinquent, it may in the same or subsequent proceeding, upon the parents of such child or either of them being duly summoned or voluntarily appearing, proceed to inquire into the ability of such parent to support

the child or contribute to such child's support, and if the court shall find such parent or parents able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and may enforce the same by executing or in any way in which a court of equity may enforce its orders and decrees, including by imprisonment and fine for contempt. No property of such parents, except the homestead of either of them, shall be exempt from levy and sale under such execution or other process issued from the court.

(b)(1) Notwithstanding the provisions of subsection (a), placement of a child in the custody of an agency of the state shall make the parents of that child liable for support from the effective date of the court's order. The court's placement of the child's custody with the state shall be deemed as an automatic application by the state, as custodian of the child, for child support services from the department of human services Title IV-D child support program.

(2) In all cases in which the court places physical custody of any child with an agency of the state, and if no prior orders for the support of the child by each parent exist, the court shall immediately order child support or shall set a hearing, which hearing shall be held within forty-five (45) days of the date the child's custody is placed with the state, for the purpose of establishing child support and the provision of medical care, to be paid by each parent to the state for the child placed in the state's custody by the court. Such hearing may be set on the court's next regular child support docket within the forty-five-day period in accordance with the provisions of subdivision (b)(3).

(3)(A) The parents and the Title IV-D office that is enforcing child support under Title IV-D of the Social Security Act for the county from which the child is placed shall receive at least ten (10) calendar days' notice of the child support hearing date unless child support was ordered at the custody hearing.

(B) The notice to the parents shall be in writing and may be given at the time of the hearing at which the child is placed in the custody of the state, and shall include a subpoena to each parent to bring to court any documents showing evidence of income, including, but not limited to, pay stubs, W-2 forms, or income tax returns. If not given to the parents at the hearing at which custody is placed with the state, the notice and subpoena shall be sent by mail to the parents or served upon them personally within five (5) working days of the date of the custody hearing, unless child support is ordered at the custody hearing.

(C) Unless child support is ordered at the custody hearing, within five (5) working days of the date of the custody hearing at which the child is placed in the custody of the state, the clerk shall by mail, personal delivery, or by electronic means if the clerk

participates in the statewide child support enforcement computer system pursuant to title 36, notify the office that is enforcing child support under Title IV-D of the Social Security Act for the county from which the child is placed of the date of the child support hearing, the names, addresses, and social security numbers of the parents and child. If support was ordered at the time of the custody hearing, the clerk shall notify the Title IV-D Office of the amount of support that was ordered.

(4)(A) At any hearing at which support is ordered, the court shall set child support as the evidence demonstrates is appropriate and in accordance with the child support guidelines established pursuant to § 36-5-101(e), and the court shall order the parents to pay the premium for health insurance for the child if the insurance is available at a reasonable cost, or the court shall order the parents to pay a reasonable portion of the child's medical costs. The order for support and for medical care shall be retroactive to the date that custody of the child was placed with the state by any order of the court.

(B) The court shall order the child support payments and any payments that are ordered by the court to be made by the parents to the state to offset the child's medical costs to be paid by the parents to the clerk, or to the department if the clerk is not participating in the statewide child support enforcement computer system pursuant to title 36. The court shall order the health insurance premiums ordered to be paid by the parents to be directed by them to the health insurance provider for the child or to be deducted from the parent's income as provided in § 36-5-501(a)(3).

(C) When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a child, each individual who is a party to any action pursuant to this part shall immediately file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office, for entry into the state registry of support cases, and shall update, as appropriate, the parties' and, for subdivisions (b)(4)(A)-(4)(C), the child's or children's:

- (i) Full name and any change in name;
- (ii) Social security number and date and place of birth;
- (iii) Residential and mailing addresses;
- (iv) Home telephone numbers;
- (v) Driver license number;
- (vi) The name, address, and telephone number of the person's employer;
- (vii) The availability and cost of health insurance for the child; and
- (viii) Gross annual income.

The requirements of this subdivision (b)(4)(C) may be included in the court's order.

(D) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (b)(4)(C) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after July 1, 1997, clear written notice shall be given to each party of the requirements of this subsection (b), procedures for complying with the subsection and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(E) In any subsequent child support enforcement action, the delivery of written notice as required by Rule 5 of the Tennessee Rules of Civil Procedure to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records as required in subdivision (b)(4)(C) shall be deemed to satisfy due process requirements for notice and service of process with respect to that party if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(F) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold from public access the address, telephone number, and location of the alleged victims(s) or threatened victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order but may not be held liable for release of such information.

(G) The provisions of § 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

(5) The court shall order support paid by income assignment and by all other means provided for the support of children as may be necessary as provided in title 36, chapter 5, and the court may enforce its orders as provided in such parts.

(6)(A) If any prior order for support exists for a child who is placed in the custody of the state in which the obligor was ordered to pay child support to the office of the clerk, the office that enforces child support pursuant to Title IV-D of the Social Security Act may certify to the clerk of that court in which the current order of support exists that the child for whom the support was ordered is in the custody of the state, and the clerk shall immediately, without further order of any court, forward all payments by the obligor to the department for distribution.

(B) If the obligor is currently paying child support directly to the obligee under a support order that exists at the time the child is placed in the custody of the state, the court shall order the obligor to begin directing payments of support directly to the clerk of the juvenile court, or if the clerk is not participating in the statewide child support enforcement computer system pursuant to title 36, to the department.

(C) When the child is no longer in the physical custody of the state, the Title IV-D office shall notify the clerk of the court to which it had sent the certification, or the department if the clerk is not participating in the statewide child support enforcement computer system, and shall notify the obligor. Until otherwise ordered by the court that had originally set the support or that currently has jurisdiction to set support, the child support shall thereafter be paid by the obligor to the person to whom the child support obligation was paid prior to the child's placement in the custody of the state.

(D) Any child support funds remaining with the state after the child is returned to the physical custody of either parent or other custodian by court order shall be returned to the custodial parent or other custodian named in the order for use in the care of the child after reimbursement to the state of such costs incurred for the child's care by the state that are not otherwise prohibited by state or federal law or regulation.

(c) In establishing or enforcing any provision of child support, if the party seeking to establish or to enforce an order of support specifically prays for revocation of a license, or if the court determines on its own motion or on motion of the party seeking to establish or seeking to enforce an order of support that an individual party has failed to comply with a subpoena or a warrant in connection with the establishment or enforcement of an order of support, the court may invoke the provisions of § 36-5-101(f)(5).

(d) Judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time.

(e) In any case in which a child is receiving assistance under a state program funded under Title IV-A of the Social Security Act, including, but not limited to, temporary assistance as provided under title 71, and the payment of support for such child is overdue, then, the department of human services may issue an administrative order to direct an individual who owes overdue support to such a child to pay the overdue support in accordance with a plan for payment of all overdue support or engage in work activities, as otherwise required and defined by the provisions of § 36-5-113.

In this case, under § 37-1-151(b)(1), Ms. Machado became obligated to pay child support from the date of the trial court's order placing T.M. in State custody. Although it is undisputed that T.M. was placed in the State's legal custody by an order of the juvenile court, the record before this Court does not indicate the date of that order. The record also does not indicate the date T.M. ran away, or whether or for how long he remained in the State's physical care before running away. It is undisputed, however, that T.M. was not living with a foster family or in a State facility on April 29, 2008, when this matter was heard in the trial court.

Ms. Machado's argument, as presented by the State in the statement of the evidence, is that it is "not right" for her to have to pay the State to "take care" of T.M. when the State did not have "custody" of him. The trial court determined that Ms. Machado was not obligated to pay child support during the time in which T.M. was not "actually in the physical custody" of the State. The resolution of the issue presented, as we perceive it, is whether, under Tennessee Code Annotated § 37-1-151, a parent is liable for support of a child in the State's legal custody despite the State's lack of physical care and control of the runaway child.

We begin with the proposition that parents are responsible for the support of their children, and may be sued for child support until the child reaches the age of majority. *Kirkpatrick v. O'Neal*, 197 S.W.3d 674, 679 (Tenn. 2006).¹ In *Kirkpatrick v. O'Neal*, the supreme court considered whether an obligor parent was required to pay child support in excess of documented "necessities" to the child's custodian after the custodial parent had died. The *Kirkpatrick* court held that the child support obligation continued and, for the purposes of that case, defined "custody" as "legal authority over a child, whether in the form of custody, guardianship, or some other court order." *Id.* at 678 n.2. Further, the duty of support is a duty owed to the child, not to the recipient, and the duty continues regardless of where or with whom the child resides. *Id.* at 680. A parent's child support duty exists without a court mandate, and where a child is placed in third party custody, including State custody, child support may be ordered retroactive to the date on which the third party was awarded custody. *Id.*

Tennessee Code Annotated § 37-1-151 requires the setting of child support when a child is placed in State custody, and it mandates that child support "shall be retroactive to the date that custody was placed with the State by any order of the court." Tenn. Code Ann. § 37-1-151(b)(4)(A)(2005)(emphasis added). The statute allows no exception to the requirement of retroactive support. *State v. Wilson*, 132 S.W.3d 340, 342-43 (Tenn. 2004). Further, it states that the parent's obligation to pay support begins on the date the child is placed in State custody by "any order of the court." Thus, it is the court's order which determines the State's custody of the child

¹If the child reaches the age of eighteen but is still in high school, the duty of support continues until the child graduates from high school or the class of which the child is a member when he or she turns eighteen graduates, whichever occurs first. Tenn. Code Ann. § 34-1-102(b) (2001) (amended 2005); *Kirkpatrick v. O'Neal*, 197 S.W.3d 674, 679 n.4 (Tenn. 2006). Further, the duty may continue indefinitely if a child is disabled prior to reaching the age of majority. It also may be extended contractually beyond the death of the obligor parent or after the child reaches the age of majority. *Id.* (citing See Janet Leach Richards, Richards on Tennessee Family Law, § 10-2 (2d ed.2004)).

and the parent's obligation to pay child support. As in *Kirkpatrick*, custody in this case must be construed as the "legal authority" over the child. Nowhere does the statute create an exception when a child has run away. Under Tennessee Code Annotated § 37-1-151, a parent's obligation to pay child support while their child is in State custody does not end with, and is not interrupted by, the child's decision to run away.

Holding

In light of the foregoing, the trial court's order is reversed. This matter is remanded for further proceedings. Costs of this appeal are taxed to the Appellee, Stephanie Machado.

DAVID R. FARMER, JUDGE